IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4258 of 2002
Date of Decision: 12.7.2007

Narpal Singh ....Appellant

Versus

Assistant Engineer, Northern Railway, Patiala & ors. ...Respondents

Before: Hon'ble Justice R.S. Madan

Present: Mr. R.K. Battas, Advocate for the appellant.
Mr. Puneet Jindal, Advocate for the respondents.

R.S. Madan (J).

This order of mine will dispose of the four Regular Second Appeals No.4258 of 2002, 1997 of 2003, 3499 of 2003 and 2335 of 2003 as these involve common question of law and facts. The regular second appeal No.4258 of 2002 has arisen out of the judgment and decree dated 19.08.2002 passed by Mrs. Sabina, Additional District Judge, Patiala in civil appeal No.2 of 11.1.2000 while other connected regular second appeals have arisen out the judgment and decree passed by Smt. Archana Puri, Additional District Judge, Patiala in civil appeals No.309 of 20.7.2002, 314 of 23.7.2002 and 313 of 23.07.2002 respectively whereby the appeal filed by the plaintiff against the dismissal of the suit was also dismissed.

The brief facts of the case are being taken from Regular Second Appeal No.4258 of 2002 titled as Narpal Singh versus Assistant Engineer, Northern Railway, Patiala and two others. In other connected Regular Second Appeals No.1997 of 2003, 3499 of 2003 and 2335 of 2003 the plaintiffs have claimed that they are running their business in the shops situated in the street in front of the railway property where a wall was being constructed in front of their shops by the defendant to cover the railway

property for the purpose of security and theft. The defendant resisted the claim of the plaintiffs and prayed for dismissal of the suit.

On the pleadings of the parties following issues were framed by trial court in RSA No. 4258 of 2002 :-

1) Whether the plaintiff is entitled to injunction as prayed for? OPP
2) Whether the plaintiffs are owners of the suit land? OPP
3) Whether the suit is not maintainable? OPP
4) Whether the plaintiff has no locus standi? OPP
5) Whether the plaintiff is not served notice U/S 80 CPC? OPD
6) Whether the plaintiff has no jurisdiction to try the present suit? OPD

On the pleadings of the parties following issues were framed in RSA No.1997 of 2003 and 3499 of 2003:-

1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
2. Whether the plaintiff has no locus standi or cause of action to file the present suit? OPD
3. Whether the suit is bad for non-service of notice u/s 80 CPC? OPD
4. Whether the suit is not maintainable in present form? OPD
5. Relief.

On 20.02.2001 an additional issue was also framed in the regular second appeals which is as under:-

“Whether the plaintiff is entitled to easementary right over the suit property as prayed for? OPD. “

In RSA No. 2335 of 2003 following issues were framed:-

1) Whether the plaintiffs have acquired the right of easement as alleged over the road and open space in question/ OPP
2) Whether the property in dispute is a road used by public including plaintiffs? OPP
3) Whether the plaintiffs are entitled to injunction for restraining the defendants from raising boundary wall? OPP
4) Whether the plaintiffs are entitled to mandatory injunction asking defendants to remove the construction made on open space in question ? OPP
5) Whether this court has jurisdiction to try the present suit? OPD
6) Whether the plaintiffs or their predecessor in interest have been making use of open space in question for the last 30 years as alleged? If so its effect? OPP
7) Whether suit is bad for misjoinder and non joinder of parties? OPD
8) Whether suit is bad for non service of notice under section 80 CPC? OPD
9) Relief.

Both the parties adduced evidence in respect of their claim.

After evaluating the evidence led by the parties, the learned trial court returned the findings of all the issues in favour of the defendant and thereby dismissed the suits of the plaintiffs. The appeals filed by the plaintiffs in all the suits against the judgments and decree of trial court were also dismissed by the Additional District Judge, Patiala.

Aggrieved by the impugned judgment and decree of the

Additional District Judge, Patiala these four regular second appeals have now been filed before this Court. It is a case where both the courts have given a concurrent finding on all the issues after evaluating the evidence lead by the parties.

Heard.

On the asking of the court as to what is the substantial question of law involved in the case, learned counsel for the appellant simply contended that the plaintiff has been enjoying the easementary right over the suit property and on account of raising the wall by the defendant the plaintiff/appellants have been deprived of their right to use the property. In RSA No.1997 of 2003 the plaintiff (Lakhmir Singh) has not stepped into witness box to substantiate his case set up in the plaint, so far as the remaining suits are concerned the plaintiffs could not prove on the record as to how they were enjoying the easementary right over the suit property. The defendant Union of India i.e. Ministry of Railway was well within its rights to raise the boundary wall to avoid theft, pilferage, encroachment and for other security purposes and while raising the construction of wall have provided sufficient passage near the said wall to facilitate the ingress and outgress of the people of the area. The authorities have taken every precaution about right of passage of the people. The act of the respondent authority have not violated or infringed in any manner the use of passage by the appellant and other inhabitants of the area. Hence the contention of the counsel lacks force.

The Railways have constructed the wall in their own property (land) and the plaintiff has failed to produce Municipal record etc. to contradict the claim/title of the defendants over the aforesaid property.

Learned counsel for the appellant was unable to point out that the learned trial court and the first appellate court have misread and misinterpreted the evidence and arrived at a wrong conclusion.

In view of the observation made by the Hon'ble Supreme Court in **Gurdev Kaur and other versus Kaki and other reported as 2007 (1) SCC 546**, this Court cannot become a third court for evaluating the evidence led by the parties.

In the result, I find no merit in the aforesaid regular second appeals which are dismissed with no order as to costs.

(R.S. MADAN)
JUDGE

12.07.2007
sk